

**CITY OF SOUTH LEBANON, OHIO  
RESOLUTION NO. 2025-22**

**A RESOLUTION APPROVING AND AUTHORIZING THE ISSUANCE OF A NOTICE OF AWARD TO FILLMORE CONSTRUCTION LLC FOR THE CONSTRUCTION OF THE 2025 CITY OF SOUTH LEBANON PAVING PROGRAM, AND AUTHORIZING THE MAYOR AND DIRECTOR OF FINANCE TO EXECUTE A CONTRACT FOR THE SAID IMPROVEMENT PROJECT AND THEREAFTER ISSUANCE OF A NOTICE TO PROCEED, AND DECLARING AN EMERGENCY**

**WHEREAS**, on March 6<sup>th</sup>, 2025, the City Council passed Ordinance No. 2025-05 appropriating funds for a City-wide street repaving program in the City of South Lebanon (the "Project"); and,

**WHEREAS**, the City published invitations to bid the Project, and the City Engineer has reviewed all bids submitted timely and recommended, based on the results of the bid opening on June 3, 2025, that the base bid of \$382,940.50 from Fillmore Construction LLC was the lowest and best bid; and,

**WHEREAS**, due to the necessity to complete the Project in the current construction season, immediate action is required and such action is necessary in order to preserve the public peace, health, safety or welfare of the City.

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the City of South Lebanon, at least two-thirds of all members elected thereto concurring:

**Section 1.** Approve the issuance of a Notice of Award to Fillmore Construction LLC (Contractor) and further authorize the Mayor and Director of Finance to execute the Project Contract after approval as to form by the Law Director and execution by the Contractor.

**Section 2.** Upon full execution of the Project Contract, the Mayor and Director of Finance are further authorized to execute and send a Notice to Proceed to the Contractor.

**Section 3.** That the recitals contained within the Whereas Clauses set forth above are incorporated by reference herein.

**Section 4.** That this Resolution is hereby declared to be an emergency measure in accordance with Section 731.30 of the Ohio Revised Code for the immediate preservation of the public peace, health, safety and general welfare; and, this Resolution shall be in full force and effective immediately upon its passage.

**Section 5.** That it is found and determined that all formal actions of the Council concerning and relating to passing this Resolution were adopted in an open meeting of Council in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Adopted this 17<sup>th</sup> day of June, 2025.

Linda S. Burke  
Linda S. Burke, Mayor

Attest:

Jennifer O'Brien  
Jennifer O'Brien/Clerk of Council

Rules Suspended: 6/17/25 (if applicable)

First Reading:       

Second Reading:       

Vote: 6 Yeas  
             Nays

Effective Date: 6/17/25

Prepared by and approved as to form:

Chase T. Kirby  
Chase T. Kirby  
Law Director  
City of South Lebanon, Ohio

## NOTICE OF AWARD

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Owner: City of South Lebanon  
Project: 2025 Paving Program  
Bidder: Fillmore Construction LLC  
Bidder's Address: 11741 State Route 72, Leesburg, Ohio 45135

### TO BIDDER:

You are notified that Owner has accepted your Bid dated 6/3/2025 for the above Project, and that you are the Successful Bidder and are awarded a Contract for:

The milling and repaving all or portions of Zoar Road, Vista Ridge Drive, Forest Avenue, and Hobart Avenue. Sections of full depth pavement repair will also be performed.

The Contract Price of the awarded Contract is: \$382,940.50

One unexecuted counterparts of the Agreement accompany this Notice of Award, and a copy of the Contract Documents has been made available to Bidder electronically. The Drawings will be delivered separately from the Contract Documents.

You must comply with the following conditions precedent within 15 days of the date of receipt of this Notice of Award:

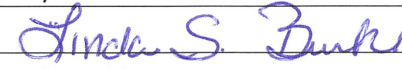
1. Deliver to Owner the Agreement, fully executed by Bidder.
2. Deliver with the executed Agreement the Contract security and insurance documentation as specified in the Instructions to Bidders and General Conditions, Articles 2 and 6.

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

Within ten days after you comply with the above conditions, Owner will return to you one fully executed counterpart of the Agreement.

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Owner: City of South Lebanon

  
Authorized Signature

By: Linda Burke

Title: Mayor

Date of Issuance: June 17, 2025

## **AGREEMENT**

This Agreement is by and between City of South Lebanon ("Owner") and Fillmore Construction LLC ("Contractor").

Terms used in this Agreement have the meanings stated in the General Conditions and the Supplementary Conditions.

Owner and Contractor hereby agree as follows:

### **ARTICLE 1—WORK**

- 1.01 Contractor must complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: The milling and repaving all or portions of Zoar Road, Vista Ridge Drive, Forest Avenue, and Hobart Avenue. Sections of full depth pavement repair will also be performed.

### **ARTICLE 2—THE PROJECT**

- 2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: City of South Lebanon 2025 Paving Program

### **ARTICLE 3—ENGINEER**

- 3.01 The Project has been designed by Choice One.

### **ARTICLE 4—CONTRACT TIMES**

- 4.01 Time is of the Essence

All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

- 4.02 Contract Times: Dates

The Work will be substantially complete on or before September 1, 2025, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before October 1, 2025.

- 4.03 Liquidated Damages

A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the Contract Times, as duly modified. The parties also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

1. Substantial Completion: Contractor shall pay Owner \$400.00 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for Substantial Completion, until the Work is substantially complete.

2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$400.00 for each day that expires after such time until the Work is completed and ready for final payment.
  3. Liquidated damages for failing to timely attain Milestones, Substantial Completion, and final completion are not additive, and will not be imposed concurrently.
- B. If Owner recovers liquidated damages for a delay in completion by Contractor, then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages (if any) specified in this Agreement.

#### **ARTICLE 5—CONTRACT PRICE**

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents, the amounts that follow, subject to adjustment under the Contract: for all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

#### **ARTICLE 6—PAYMENT PROCEDURES**

6.01 Submittal and Processing of Payments

- A. Contractor must submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 Progress Payments; Retainage

- A. Owner will make progress payments on the basis of Contractor's Applications for Payment monthly at Owner's regularly scheduled public meeting during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Unit Price Work based on the number of units completed.
1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.
    - a. 92 percent of the value of the Work completed (with the balance being retainage).
      - 1) If 50 percent or more of the Work has been completed, as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and
    - b. 92 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 92 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less 100 percent of the unit price of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

6.03 Final Payment

- A. Upon final completion and acceptance of the Work, Owner will pay the remainder of the Contract Price in accordance with Paragraph 15.06 of the General Conditions.

6.04 Consent of Surety

- A. Owner will not make final payment, or return or release retainage at Substantial Completion or any other time, unless Contractor submits written consent of the surety to such payment, return, or release.

6.05 Interest

- A. All amounts not paid when due will bear interest at the rate allowed by law at the place of the Project.

**ARTICLE 7—CONTRACT DOCUMENTS**

7.01 Contents

- A. The Contract Documents consist of all of the following:
  - 1. This Agreement.
  - 2. Performance/Payment Bonds.
  - 3. General Conditions.
  - 4. Supplementary Conditions.
  - 5. Wage Determination and Payroll Submittal.
  - 6. Specifications as listed in the table of contents on page S-1
  - 7. Drawings (not attached but incorporated by reference) consisting of 6 sheets with each sheet bearing the following general title: 2025 Paving Program.
  - 8. Addenda number 1.
  - 9. Exhibits to this Agreement:
    - a. Contractor's Bid.
  - 10. The following which may be delivered or issued on or after the Effective Date of the Contract:
    - a. Notice to Proceed.
    - b. Notice of Commencement.
    - c. Certificate of Owner's Attorney.
    - d. Certificate of Owner's Financial Officer.

11. The following which must be completed before payment(s) is issued and are not attached hereto:
  - a. Application for Payment.
  - b. Change Orders.
  - c. Partial Release of Liens and Claims.
12. The following which must be completed before final payment is issued and are not attached hereto:
  - a. Application for Payment.
  - b. Change Orders.
  - c. Final Release of Liens and Claims.
  - d. Affidavit – Municipal Income Tax.
  - e. Affidavit of Compliance, Prevailing Wages.
- B. The Contract Documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 7.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

## **ARTICLE 8—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS**

### **8.01 Contractor's Representations**

- A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:
  1. Contractor has examined and carefully studied the Contract Documents, including Addenda, if any.
  2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
  4. Contractor has carefully studied, if any, the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.
  5. Contractor has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.

6. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.
7. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
8. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
9. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
11. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

#### 8.02 Contractor's Certifications

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.02:
  1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
  2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
  3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
  4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

8.03 Standard General Conditions

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are EJCDC® C-700, Standard General Conditions for the Construction Contract (2018), published by the Engineers Joint Contract Documents Committee, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or “track changes” (redline/strikeout), or in the Supplementary Conditions.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

The most recent date between the two parties below will be the Effective Date of the Contract.

Owner: <u>City of South Lebanon</u> (typed or printed name of organization)	Contractor: <u>Fillmore Construction LLC</u> (typed or printed name of organization)
By: <u>Linda S. Burke</u> (individual's signature)	By: <u>6-19-25</u> (individual's signature)
Date: <u>24 June 2025</u> (date signed)	Date: <u>Heather Storer</u> (date signed)
Name: <u>Linda Burke</u> (typed or printed)	Name: <u>Heather Storer</u> (typed or printed)
Title: <u>Mayor</u> (typed or printed)	Title: <u>Project Manager</u> (typed or printed)
Attest: <u>[Signature]</u> (individual's signature)	Attest: <u>[Signature]</u> (individual's signature)
Title: <u>Clerk of Council</u> (typed or printed)	Title: <u>Office Manager</u> (typed or printed)
Address for giving notices: <u>10 N. High Street</u> <u>South Lebanon, Ohio 45065</u>	Address for giving notices: <u>11741 State Route 72</u> <u>Leesburg, Ohio 45135</u>
Phone: <u>513-494-2296</u>	Phone: <u>937-780-1301</u>
Email: <u>lburke@southlebanon.org</u>	Email: <u>heather@fillmoreconstructionllc.com</u>
	Federal I.D. No.: <u>31-1578833</u>

# Covered By Bond Included In Contractor's Bid

## PERFORMANCE/PAYMENT BOND

(Section 153.571 Ohio Revised Code)

KNOW ALL PERSONS BY THESE PRESENTS, that we, the undersigned \_\_\_\_\_ as principal (Contractor) and \_\_\_\_\_ as sureties, are hereby held and firmly bound unto City of South Lebanon as obligee (Owner) in the penal sum of \_\_\_\_\_ dollars, for the payment of which well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that whereas the above named principal did on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, enter into a contract with the Owner, which said contract is made a part of this bond the same as though set forth herein;

Now, if the said principal shall well and faithfully do and perform the things agreed by principal to be done and performed according to the terms of said contract; and shall pay all lawful claims of subcontractors, material suppliers, and laborers, for labor performed and materials furnished in the carrying forward, performing, or completing of said contract; we agreeing and assenting that this undertaking shall be for the benefit of any material supplier or laborer having a just claim, as well as for the obligee herein; then this obligation shall be void; otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated.

The said surety hereby stipulates and agrees that no modifications, omissions, or additions, in or to the terms of the said contract or in or to the plans or specifications therefor shall in any wise affect the obligations of said surety on its bond.

# Covered By Bond Included In Contractor's Bid

SIGNED AND SEALED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

## PRINCIPAL:

X \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

## SURETY:

X \_\_\_\_\_

By: \_\_\_\_\_

*Attorney-in-Fact*

## SURETY INFORMATION:

\_\_\_\_\_  
*Street*

\_\_\_\_\_  
*City*

\_\_\_\_\_  
*State*

\_\_\_\_\_  
*Zip*

\_\_\_\_\_  
*Telephone Number*

## SURETY AGENT'S INFORMATION:

\_\_\_\_\_  
*Agency Name*

\_\_\_\_\_  
*Street*

\_\_\_\_\_  
*City*

\_\_\_\_\_  
*State*

\_\_\_\_\_  
*Zip*

\_\_\_\_\_  
*Telephone Number*

## NOTICE TO PROCEED

Owner: City of South Lebanon

Contractor: Fillmore Construction LLC

Project: 2025 Paving Program

Owner hereby notifies Contractor that the Contract Times will commence to run on the Effective Date of the above Contract pursuant to Paragraph 4.01 of the Supplementary Conditions.

On that date, Contractor shall start performing its obligations under the Contract Documents. No Work will be done at the Site prior to such date.

In accordance with the Agreement:

The date by which Substantial Completion must be achieved is September 1, 2025, and the date by which readiness for final payment must be achieved is October 1, 2025.

Before starting any Work at the Site, Contractor must comply with the following:

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Owner: City of South Lebanon

By (signature):

Linda S. Burke

Name (printed):

Linda Burke

Title:

Mayor

Date:

24 June 2025

**NOTICE OF COMMENCEMENT OF PUBLIC IMPROVEMENT**  
(Section 1311.252 Ohio Revised Code)

State of Ohio, County of Warren, ss:

Notice is hereby given by the undersigned public authority ("Public Authority") of the commencement of a public improvement ("Project") as follows:

(1) The Project is identified as:

Project Name: 2025 Paving Program

Location: South Lebanon, Ohio

(2) The Public Authority responsible for the Project is:

Public Authority: City of South Lebanon

Address: 10 N. High Street, South Lebanon, Ohio 45065

(3) All principal contractors on the Project, the trade and Surety of each are as follows:

Principal Contractors Name: Fillmore Construction LLC

Address: 11741 State Route 72, Leesburg, Ohio 45135

Trade: General Contractor

Surety Name and Address: Nationwide Mutual Insurance Company, 1100 Locust St., Des Moines, IA 50391

(4) The name & address of the representative of the Public Authority upon whom service may be made for the purposes of serving an affidavit pursuant to Section 1311.26 of the Ohio Revised Code is:

Name: Linda Burke

Address: 10 N. High Street, South Lebanon, Ohio 45065

(5) The Public Authority first executed a contract with a principal contractor for the Project on the signature date below.

Public Authority: City of South Lebanon

Signature: Linda S. Burke

Title: Mayor

Date: 24 June 2025

The signator of this Notice of Commencement of Public Improvement ("Notice") personally appeared before me on behalf of the Public Authority, a notary public in and for said county, and swore that all the information in the Notice is true as he/she verily believes and further that he/she is fully authorized by the Public Authority to give said notice.

Sworn to before me and subscribed in my presence on this 24<sup>th</sup> day of June, 2025

Notary Public



Jennifer M O'Brien  
Notary Public, State of Ohio  
My Commission Expires:  
October 14, 2029

Agreement Forms

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## CERTIFICATE OF OWNER'S ATTORNEY

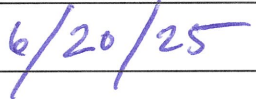
I, the undersigned, Chase T. Kirby, Esq., the duly authorized and acting legal representative of City of South Lebanon do hereby certify as follows:

I have examined the attached contract(s), surety bonds, insurance, and the manner of execution thereof, and I am of the opinion that each of the aforesaid documents meets the requirements set forth within and have been duly executed by the proper parties thereto acting through their duly authorized representatives; that said representatives have full power and authority to execute said agreements on behalf of the respective parties named thereon; and that the foregoing agreements constitute valid and legally binding obligations upon the parties executing the same in accordance with terms, conditions and provisions thereof.

Signature: \_\_\_\_\_



Date: \_\_\_\_\_



## CERTIFICATE OF OWNER'S FINANCIAL OFFICER

**WITNESS:**

I, Tina Williams, Fiscal Officer, hereby certify that the money to meet this contract has been lawfully appropriated for the purpose of the contract and is in the treasury of City of South Lebanon, Ohio, or is in the process of collection to the credit of the appropriate fund free from prior encumbrance.

  
Fiscal Officer

6/30/25  
Date

SEAL: